

1 | didn't --

2 | MR. SCHONMAN: We --

3 | CHAIRMAN MARINO: You were a party. I mean you're
4 | listed as a party to the Skidelsky case. But did you file
5 | exceptions that --

6 | MR. SCHONMAN: That's correct. The Bureau did not
7 | participate initially in that proceeding. But the Bureau did
8 | file a petition for recon as you know in which case as I
9 | recall the Bureau expressed its opinion that there were
10 | grounds for Judge Kuhlmann's ruling in, on that threshold
11 | showing matter.

12 | MR. BLUMENTHAL: Yes --

13 | MR. SCHONMAN: The --

14 | MR. BLUMENTHAL: -- you did.

15 | MR. SCHONMAN: -- the third, the third ground on which
16 | Judge Kuhlmann found Normandy unqualified was that Normandy
17 | failed to report a contingent ownership interest.

18 | One of the issues in the case before you inquired as to
19 | the effects of the Queensbury decision on Normandy's renewal
20 | application. The idea below suggests that Normandy's
21 | disqualification in --

22 | CHAIRMAN MARINO: So let, let me just put -- let me
23 | just get it straight in my mind. Mr. Tillotson filed, filed a
24 | brief defending the initial decision in, in the Skidelsky
25 | case. The Bureau sort of indirectly supports the initial

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1 decision. And Mr. Lynch filed exceptions to the initial
2 decision on the Skidelsky case.

3 MR. SCHONMAN: Well, I'd like to be very clear about
4 this. I don't think that the Bureau participated in the
5 proceeding to the extent that it filed exceptions one way or
6 the other.

7 MR. BLUMENTHAL: No, but let me, let me try and --

8 MR. SCHONMAN: Sure.

9 MR. BLUMENTHAL: -- clarify if I could, Mr. Schonman.
10 We have a couple of important legal points. We can leave some
11 time for you to argue some of the factual things and what,
12 what's believable on the record and what isn't. But we've got
13 some interesting preliminary legal points that we have to,
14 that we have to deal with.

15 Point number one is that after the Board issued its
16 decision in Skidelsky, and we did affirm the ALJ on his
17 finding that Mr. Lynch did not have by the Commission standard
18 reasonable assurance of a transmitter site, the Bureau
19 sometime later filed with us a pleading in which it asked us
20 to resolve the other issues in which Judge Kuhlmann had found
21 adversely against Normandy. It is my recollection from that
22 pleading, Mr. Schonman, correct me if I'm wrong, that the
23 pleading tended to support the findings of Judge Kuhlmann. Is
24 that or isn't that -- or were they more neutral to your
25 recollection?

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1 MR. SCHONMAN: Well, as I said earlier, to the best of
2 my recollection, the Bureau supported the judge's finding with
3 respect to the exaggerated threshold showing.

4 MR. BLUMENTHAL: That was my recollection.

5 MR. SCHONMAN: I cannot --

6 MS. GREENE: As an exaggerated showing or as a, an
7 untruthful showing?

8 MR. SCHONMAN: I'm trying to recall now what it is the
9 Bureau represented in the petition for recon --

10 CHAIRMAN MARINO: Well, we can, we can check that. And
11 as Board Member Blumenthal indicated earlier, we may ask you
12 to, to supplement. Because I think the next question he's
13 going to ask you about is collateral estoppel.

14 MR. BLUMENTHAL: You got it. And here's, and here's
15 why it, it may be important. In the case of WIOO, a case in
16 which the Bureau itself relies upon very heavily, when the AM
17 comparative renewal case came before an administrative law
18 judge, the owners of WIOO sought to introduce new evidence to
19 exculpate themselves from the Commission's conclusions of
20 misconduct in a contemporaneous FM proceeding. Citing the
21 doctrine of collateral estoppel, the administrative law judge
22 refused any further evidence of the events that occurred in
23 the FM comparative proceeding. WIOO in the comparative
24 renewal case excepted to that ruling saying it should have
25 been allowed to augment the record, to supplement the record.

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1 As we pointed out in our order in response to the
2 Bureau's extraordinary pleading, the Commission in WIOO said
3 that the ALJ was absolutely correct. Collateral estoppel is
4 just that. It is total. It is complete. The, the issue is
5 precluded from further discussion.

6 We did CF to our Ocean Pines because we had a slightly
7 different situation where, where it wasn't the same applicant
8 but different applicants. But we had held that they were in
9 privity, so we sort of tried to, tried to adhere to the, the
10 court's requirements of what's necessary for a fair hearing
11 under the doctrine of collateral estoppel by allowing a
12 certain Dr. Berger to introduce any, any evidence, any
13 exculpatory evidence he had not had before.

14 As a legal matter though, Mr. Schonman, are we not
15 bound by this, the Board by WIOO insofar as, as considering
16 final the adverse findings and conclusions in Skidelsky? And
17 if not, why not?

18 MR. SCHONMAN: Board Member Blumenthal, the Bureau has
19 taken the position in this case that the Board's ruling that,
20 that the hearing in this proceeding would have to live by your
21 ruling, that is the Board's ruling, that Normandy be entitled
22 to present exculpatory evidence --

23 MR. BLUMENTHAL: We, we gave the judge discretion.

24 MR. SCHONMAN: That's right.

25 MR. BLUMENTHAL: Is what we did.

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1 MR. SCHONMAN: There are --

2 MR. BLUMENTHAL: Maybe we were wrong. Because as I
3 read WIOO and the RKO case where the Commission also precluded
4 any discussion of issues previously decided by an
5 administrative law judge, absolutely precluded it. And they
6 have a one long page discussion on, on the difference between
7 started to say, says collateral estoppel. And I may say that
8 the better authorities now use the term issue preclusion. But
9 the result is the same. Enough is enough.

10 MR. SCHONMAN: My, my point is that the Bureau has
11 accepted as a given the fact that Normandy was entitled, had
12 the opportunity that is, to present exculpatory evidence. Now
13 I have also seen --

14 CHAIRMAN MARINO: Well, I -- I'm going to -- I'm one
15 step away from that. I'm wondering if, if the findings that
16 Judge Kuhlmann made are collateral estoppel here, because we
17 never reviewed them and affirmed them. Then the Commission
18 recently said that unless, unless those findings are reviewed
19 and affirmed up the line through the litigation process,
20 collateral estoppel doesn't apply. Judge, Judge Sippel raised
21 that very issue in his, in his ID. What's, what's the
22 Bureau's response to that?

23 MS. GREENE: Isn't the complication the fact that the
24 party withdrew from the case which just allowed them to
25 become --

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1 MR. BLUMENTHAL: No.

2 MR. SCHONMAN: With all due respect, I get the sense
3 that we may be steering away from the issue here. An issue is
4 specified in this proceeding to determine based on the ID in
5 Queensbury what effect that ID has on this case.

6 CHAIRMAN MARINO: All right --

7 MR. BLUMENTHAL: You, you want to get, you want to get
8 to the KQED WIOO --

9 MR. SCHONMAN: No, basically I want to get to this
10 case --

11 MR. BLUMENTHAL: -- and one bullet is enough. But
12 before we get to that we, we would like to ask you since you
13 are the experts also in this area of law and you see that we
14 do have a, some novel legal questions. I have one last novel
15 legal question, and then you can go on with -- even if, even
16 if Mr. Lynch was not an appropriate candidate for the New York
17 state broadcasting record keeper of the year award, he doesn't
18 deserve to lose the license to a challenger.

19 I now turn to your pleadings if I could. I turn to
20 your exceptions -- maybe Mr. Tillotson will lend you -- he
21 seems to have copies of everything back there. The pages 9
22 and 10 you make a very interesting argument, one that our, our
23 top staff lawyer, Audrey Allison, heard discussed yesterday in
24 a case argued before the D.C. circuit. You argue that the ALJ
25 erred in finding that normally lacked candor with respect to

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1 the issues programs lists because the, the ALJ did not add a
2 specific issue. You cite to a case that the Board always
3 thought presented some problems in these kind of cases and
4 that is West Coast Media.

5 You must understand that it is the Commission's
6 position that A, truth and candor are always an issue citing
7 William Rogers and now the most recent case involving
8 Elizabeth Younts in Southern Pines, North Carolina. And
9 without prejudging the judges of the D.C. circuit, the report
10 that came back to us yesterday from the D.C. circuit is the

1 lack of candor without the designation of a specific issue?

2 MR. SCHONMAN: Let me answer your question this way,
3 Board Member Blumenthal. Candor is always an issue whether
4 it's specified or not. However, I believe the reference
5 you're making in the Bureau's exceptions also goes to the
6 absence of a programs issues lists issue for which there was
7 none in this case. And I find --

8 MR. BLUMENTHAL: Isn't that the same thing --

9 MR. SCHONMAN: No, it's not.

10 MR. BLUMENTHAL: Let me ask you this question, Mr.
11 Schonman. If on the stand I say to you did you duly place in
12 your public file a quarter annual issues program list, and you
13 respond to me I did so every quarter of a license period for a
14 full 7 years. And not only did I do so, I had it notarized by
15 an appropriate official. And I had three program directors
16 attest to it. It turns out through further evidence that none
17 of that was true. Are you saying we could disregard the
18 misrepresentation for lack of a specifically designated issue?

19 MR. SCHONMAN: I think you may have misunderstood,
20 Board Member Blumenthal, what it is I said. I said that
21 candor is always an issue regardless of whether a specific
22 candor issue is specified or not. It's inherent. But there
23 was no public -- I'm sorry. There was no programs issues list
24 issue in this case --

25 CHAIRMAN MARINO: But there was a legitimate renewal

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1 | expectancy issue. And that's compliance with the laws --

2 | MR. BLUMENTHAL: -- than that.

3 | MR. SCHONMAN: Let me get to that --

4 | MR. BLUMENTHAL: It was even worse than that. It was
5 | an exhibit proffered --

6 | MR. LYNCH: I know.

7 | MR. BLUMENTHAL: -- in a comparative proceeding in
8 | which Mr. Lynch as an applicant --

9 | MR. LYNCH: I agree.

10 | MR. BLUMENTHAL: -- in the Skidelsky case was seeking
11 | special credit for a good broadcast record.

12 | MR. LYNCH: Sure.

13 | MR. BLUMENTHAL: And voluntarily placed it, placed it
14 | in.

15 | MS. ALLISON: You're into your rebuttal time.

16 | MR. BLUMENTHAL: So --

17 | CHAIRMAN MARINO: We'll give you plenty -- you'll have
18 | plenty of time.

19 | MR. BLUMENTHAL: -- so here we have not only an issue
20 | not added, but we had in a sense credit sought in an exhibit
21 | submitted by Normandy Broadcasting in the Skidelsky case which
22 | the Bureau characterizes at least here this morning as perhaps
23 | an exaggeration. Mr. Tillotson, of course, would, would like
24 | to use stronger language.

25 | I'm not sure where the distinction you're drawing is

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1 going, Mr. Schonman.

2 MR. SCHONMAN: First of all, I'm not here to re-
3 litigate the Queensbury decision. I'm here to litigate the
4 Glens Falls case. That's number one.

5 Number two, I am not standing before you trying to
6 minimize the significance of the misconduct that was found in
7 the Queensbury case. The Bureau considers that to be serious
8 misconduct. I am not going to minimize that.

9 There are two matters which the Bureau wanted to
10 discuss this morning. The first one was the so-called
11 Skidelsky issue. The second matter was the renewal
12 expectancy. We've sort of come full circle. Let me talk for
13 a moment in response to your question about renewal
14 expectancy, although that is the second matter I wanted to
15 discuss. So I will end up revisiting that.

16 I think it's accepted Commission policy that there are
17 five criteria to look at, to examine when one is determining
18 whether to award a renewal or not.

1 CHAIRMAN MARINO: You've won that battle. Go ahead.

2 MR. SCHONMAN: One, one of those, one of those
3 criterions is whether the licensee has complied with the
4 Commission's rules and regulations. I think that's --

5 CHAIRMAN MARINO: True. Very true.

6 MR. SCHONMAN: -- that's an accurate description.

7 In this case, in the Glens Falls case, it would appear
8 that the ID made a determination that there had been a
9 violation of the Commission's rule or requirement that a
10 licensee maintain a programs issues list on a quarterly basis.
11 The Bureau questions how the judge could make that conclusion
12 in the absence of an issue when Normandy had no basis for --

13 MS. GREENE: You know, I'm puzzled. Because are you
14 suggesting to me that for every dereliction there is raised in
15 response to the issue and the compliance with rules that there
16 must be sidestepping to designate a separate issue to look at
17 that dereliction before it can then be weighed in the, under
18 the issue or under the factor dealing with compliance?

19 MR. SCHONMAN: Board Member Reed Greene, it's -- I, I
20 would be loathe to categorize it -- characterize it rather as
21 a sidestepping. I think it's called due process where,
22 where --

23 CHAIRMAN MARINO: Mr. Schonman, it's implicit in the,
24 in the legitimate renewal expectancy, isn't it?

25 MR. BLUMENTHAL: There's something more basic. Let me

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1 interject. I, I know this sounds like whispering down the
2 lane. I asked Mr. Lynch when he first came --

3 CHAIRMAN MARINO: That's right. We just took --

4 MR. BLUMENTHAL: -- the first question was I read a
5 statement and Mr. --

6 CHAIRMAN MARINO: Eight out of, eight out of twenty-
7 six --

8 MR. BLUMENTHAL: -- Mr. Tillotson's pleading which says
9 the record reflected that during all but 6 of the 28 quarters
10 in the license term, Normandy failed to place issues programs
11 lists in its public files reflecting any programming error on
12 WYLR, etc., etc. You are arguing to me now that, that well,
13 gee, there should have been an issue on it. What, what do we
14 do with the admission?

15 MR. SCHONMAN: There should have been an issue to
16 determine whether the licensee violated the Commission's
17 rules. One of the other criteria under the renewal
18 expectancy is whether the licensee provided issue responsive
19 programming. And I think it, it is Commission policy that at
20 least a starting point, a starting point in, in an examination
21 as to whether the licensee provided that type of programming
22 or the issues programs lists. It's a starting point. It's
23 not an end all. The programming is the end all.

24 If the lists are deficient for some reason, then the
25 licensee has an obligation to come in with some additional

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1 showing. How would it -- how does a licensee do that? The
2 licensee does that by coming in with testimony or documentary
3 evidence the best way the licensee can, the only way the
4 licensee can. But the lists are a starting point.

5 But with respect to the first criterion, or perhaps

1 entitled to a very strong renewal expectancy and if not a
2 strong renewal expectancy how would you categorize it and to
3 which case, renewal case would you analogize it?

4 MR. SCHONMAN: Board Member Blumenthal, it is the
5 Bureau's position that Normandy is entitled to a renewal
6 expectancy.

7 MR. BLUMENTHAL: How strong?

8 MR. SCHONMAN: The Bureau is not going to take a
9 position on the relative levels of renewal expectancy, because
10 that is a comparative matter vis a vis his competitor in this
11 case.

12 MR. BLUMENTHAL: Okay. Well, that's true --

13 MR. SCHONMAN: What I'd like to do is, is at the very
14 least discuss why the Bureau feels that the licensee is
15 entitled in this case to a renewal expectancy.

16 MR. BLUMENTHAL: Yeah, well I -- well, you can do it on
17 a comparative basis. And although you will not take a
18 position -- although you did take a position in the Fox case,
19 very interesting I thought, the one that had diminished from
20 the, from the strong renewal expectancy the ALJ did, the court
21 in Cowles Broadcasting, subnom, Central Florida said you're
22 going to have to -- whether somebody is entitled to a renewal
23 expectancy over a challenger depends on the strength,
24 underscored, italicized, in quotes, of that renewal
25 expectancy. And yet the Bureau says to us today that it will

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1 not take the position on what the strength of that renewal
2 expectancy should be.

3 Even if you're going to do it on a "comparative" basis,
4 maybe we should let you give your explanation of how you would
5 measure it on either an absolute basis based on license term
6 performance or on a comparative basis vis a vis Mr. Brandt.

7 MR. SCHONMAN: Well, I can do it one of two ways. I
8 can discuss the Bureau's exceptions with respect to renewal
9 expectancy which is the method that I, I had intended to
10 present to the Board this morning, or I can answer your
11 question directly right now on what indicia, what factors the,
12 the Bureau is interested in, the factors the Bureau considered
13 in arriving at its conclusion that Normandy is entitled to a
14 renewal expectancy.

15 MR. BLUMENTHAL: Well, it's Friday. Take your choice.
16 Any way you want to answer it, Mr. Schonman.

17 MR. SCHONMAN: Well --

18 MR. BLUMENTHAL: Go right ahead.

19 MR. SCHONMAN: Thank you. The Bureau believes that the
20 ID denied Normandy a renewal expectancy on the basis of a
21 wholly subjective interpretation of what constitutes good
22 public service programming. For example, the ID faults
23 Normandy for providing an entertainment format on WYLR which
24 consists largely of music directed towards young people, i.e.
25 rock and roll.

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1 MR. BLUMENTHAL: Which ALJ, the one in Skidelsky or,
2 or --

3 MR. SCHONMAN: I'm talking about Glens Falls.

4 MR. BLUMENTHAL: -- Judge Sippel here.

5 MR. SCHONMAN: Judge Sippel. The ID in this case
6 concludes that in selecting such a format, that is a format
7 geared towards young people, Normandy necessarily limited the
8 scope of public service programs that it might have aired.
9 The Bureau submits that any discussion about WYLR's
10 entertainment format is irrelevant to the matter of renewal
11 expectancy.

12 Moreover, there just isn't any legal basis for denying
13 a renewal expectancy because the station played rock music.
14 Condoning such a policy would adversely affect the vast
15 majority of FM stations across the country which play rock
16 music of one kind or another.

17 MR. BLUMENTHAL: No, I think the vast maj-- it depends
18 on whether you're talking about mean, medium or mode. The
19 most popular format is country and western. But be that as it
20 may --

21 MR. SCHONMAN: Perhaps not the vast majority. But a
22 significant number of --

23 MR. BLUMENTHAL: Okay.

24 MR. SCHONMAN: -- FM stations across the country. The
25 ID also faults Normandy for not broadcasting one type of

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1 public affairs program that the ID considered key to renewal
2 expectancy, a so-called talking head round-table discussion,
3 the type of program that many radio stations offer on Sunday
4 mornings at 6 a.m.

5 MR. BLUMENTHAL: You mean as if C-SPAN were here --

6 MR. SCHONMAN: The audio portion of C-SPAN --

7 MR. BLUMENTHAL: -- watching, watching this oral
8 argument thereby killing off all sales of No-Doz.

9 MR. SCHONMAN: Exactly.

10 MR. BLUMENTHAL: Okay.

11 MR. SCHONMAN: The Bureau submits that there is no
12 right or wrong type of public affairs program nor is there
13 quantitative requirements. What Commission policy does allow

14 for is discretion on the part of broadcast. Discretion

1 merely for the cosmetic purpose of satisfying Commission
2 requirements. They ran throughout the day when people were
3 really there to listen. The testimonial --

4 MR. BLUMENTHAL: Do you cite evidence under your
5 proposed findings of fact and conclusions of law cite to
6 probative, reliable evidence which would give the Board some
7 idea of the quantity and the bread of this non-entertainment
8 programming. Where I -- the evidence. Do you point to the
9 evidence on the record --

10 MR. SCHONMAN: Well, let me get the ID. The initial
11 decision in this case stated that Normandy did in fact
12 interview community leaders, members of the general public and
13 various groups and agencies in the Glens Falls for
14 ascertainment purposes. The ID said that. The ID also said
15 it is found for reasons detailed in, in the ID that WYLR did
16 broadcast news, sports, weather and PSAs on a regular basis.

17 MS. GREENE: I'd like to ask you a question about the
18 programming. There's been some discussion here about the
19 significance of the programming responsive to needs and
20 ascertained needs and interests. And I'm a little bit
21 confused on that. Does the record show that on the FM station
22 Mr. Lynch broadcast programming that was responsive to the
23 ascertained needs and interests as distinguished from
24 programming that was, was for activities, events, whatever in
25 the community.

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1 MR. SCHONMAN: Yes.

2 MS. GREENE: To the extent that those are not fully
3 ascertainable --

4 MR. SCHONMAN: Well, when we're talking renewal
5 expectancy, the only type of non-entertainment programming
6 that we should be considering is issue responsive programming.
7 In answer to your question, yes indeed, there was issue
8 responsive programming. And the ID cites a number of
9 occasions --

10 MS. GREENE: Throughout, throughout the license term?

11 MR. BLUMENTHAL: Was there a nexus as in Fox? In the
12 Fox case, we repeated two paragraphs from the administrative
13 law judge which, which explained the mechanics of how the
14 licensee tied the ascertainment process to the public service
15 programming that actually came out. Is there such evidence
16 here?

17 MR. SCHONMAN: Yes. Yes indeed.

18 MR. BLUMENTHAL: Where?

19 MR. SCHONMAN: Normandy introduced in one of its
20 exhibits, I'm afraid I don't remember the number of the
21 exhibit, a list of organizations and individuals, dozens whom
22 it contacted for the purpose of ascertainment. And when I say
23 whom it contacted, I mean --

24 MR. BLUMENTHAL: All right.

25 MR. SCHONMAN: -- Mr. Lynch and members of his staff.

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1 MR. BLUMENTHAL: All right. I may -- is there another
2 list which shows the programming that responded to it?

3 MR. SCHONMAN: Yes, indeed.

4 MR. BLUMENTHAL: Okay.

5 MR. SCHONMAN: At the hearing --

6 MS. GREENE: And it was on the FM station?

7 MR. SCHONMAN: On the FM station. That's all I'm
8 talking about this morning.

9 MR. BLUMENTHAL: Okay.

10 MR. SCHONMAN: On the FM station, the transcripts will
11 reveal that Bureau counsel went through a list questioning Mr.
12 Lynch about each program. And each program the Bureau asked

1 MR. SCHONMAN: -- the --

2 MS. GREENE: Continue. I'm sorry.

3 MR. SCHONMAN: The ID lists, lists a number of, a
4 number of programs that were broadcast that it describes as
5 issue responsive programming. A Bike-A-Thon, it ran a remote
6 about a Bike-A-Thon for multiple sclerosis, an ascertained
7 issue. Earth Day, a program about Earth Day. A blood drive
8 because blood, giving blood was an issue in that community.
9 Handicapped children, recycling, needy children, ecology
10 needs, drugs. There were programs and issues that the ID
11 mentions here. Yet for some reason which the Bureau can't
12 fathom the ID appears to have ignored these things.

13 MR. BLUMENTHAL: But, but we --

14 MS. GREENE: Well, one of the problems that we seem to
15 be having is that then the lists that are supposed to be kept
16 listing issue responsive programming apparently didn't list
17 much programming on the FM station through parts of the
18 license term. From what you're arguing to us, are we then
19 simply to disregard those lists as being inaccurate
20 reflections of the programming?

21 MR. SCHONMAN: I think what we have to do here is look
22 at the lists for what they are. And I think I've said this
23 earlier. The lists are a starting point. They are -- the
24 lists are not the end all. The programming is the end all.
25 In this case there may have been derelictions with respect to

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1 the keeping of the lists or preparing the lists.

2 MS. GREENE: What you're suggesting --

3 MR. SCHONMAN: In the absence of those lists, we have
4 to look at something else to determine was there programming
5 or wasn't there issue responsive programming. And --

6 MS. GREENE: So what you're suggesting we do is
7 separate the record keeping which apparently all acknowledge
8 has been less than perfect from the programming and all of the
9 other evidence.

10 MR. SCHONMAN: Exactly. If you start out with the
11 premise that because the --

12 MS. GREENE: Make no conclusions from the record
13 keeping or lack thereof.

14 MR. SCHONMAN: If you start out with the premise that
15 because there were no lists there was no programming, then
16 there's no way that the licensee can ever show that it
17 produced --

18 MR. BLUMENTHAL: I have a more basic question, Mr.
19 Schonman. And it's your fault meaning you, the Mass Media
20 Bureau and the Commission and the Review Board and the entire
21 government from the president all the way down to the man who
22 picks up leaves at Haines Point.

23 During the 1980s, we deregulated appreciably. We got
24 rid of ascertainment. After a little squabble with the United
25 States Court of Appeals for the D.C. Circuit and the Office of

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- 1 United Church of Christ case over how much log keeping was
- 2 required. We did away with almost every bit of logging

1 used to say PSA, this, this sort of a public interest
2 programming.

3 MR. SCHONMAN: Then assuming --

4 MR. BLUMENTHAL: Logs used to do that.

5 MR. SCHONMAN: -- assuming arguendo that the lists in
6 this case were deficient, how is the license --

7 MR. BLUMENTHAL: We don't have to assume that. It's
8 been admitted, Mr. Schonman.

9 MR. SCHONMAN: -- how is the licensee able to show that
10 it has a renewal expectancy? The only way it can --

11 MR. BLUMENTHAL: That's something you ought talk about
12 with your colleagues in the Mass Media Bureau.

13 MR. SCHONMAN: The only way that it can show that it
14 did provide issue responsive programming is through testimony,
15 documentary evidence. And in this case Mr. Lynch testified.
16 He had two, two station officials, managers testify as to what
17 was provided on that station.

18 MR. BLUMENTHAL: All right.

19 MR. SCHONMAN: There was documentary evidence --

20 CHAIRMAN MARINO: Mr. Schonman --

21 MR. SCHONMAN: -- unrebutted documentary evidence --

22 CHAIRMAN MARINO: Mr. Schonman, let me, let me ask
23 you -- let me tie it together. You're familiar with the
24 findings and conclusions that Judge Kuhlmann made --

25 MR. SCHONMAN: Yes.

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1 CHAIRMAN MARINO: -- about the reliability of Mr.
2 Lynch. Assuming that that's a given that, that we're
3 collaterally estopped from challenging those and --

4 MR. SCHONMAN: And that is the assumption the Bureau
5 made.

6 MR. BLUMENTHAL: It's also the law under WIOO --

7 CHAIRMAN MARINO: Well, I'm not sure. I'm not sure.
8 But assume that it is. Now we've got another judge who comes
9 along, Judge Sippel in the renewal case and said not only did
10 he do it in that case, but it was aggravated in my proceeding.
11 And I also find as Judge Kuhlmann found that he's not a fit
12 licensee. What do we do with those findings? We're estopped
13 from -- you're saying we're estopped from changing what Judge
14 Kuhlmann found. And that in itself might be enough.

15 MR. SCHONMAN: I'm not sure I understand your, your
16 question. We have a decision in Queensbury in which Normandy
17 was found unqualified because it did bad things, seriously bad
18 things. The issue in this case is given that decision in
19 Queensbury what effect does it have on his qualifications
20 here?

21 MR. BLUMENTHAL: But we, we cannot argue out today, and
22 I think we ought to go on to Mr. Tillotson, whether, whether
23 we're dealing here with, with a WIOO/KQED situation --

24 MR. SCHONMAN: We are indeed.

25 MR. BLUMENTHAL: There, there is -- we're going to have

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